

State of South Dakota
Project No. PP 3234(51)
Brookings County, PCN 0505
34th Ave. east of Brookings, SD
DOT 197429L, MP 288.3, Mainline

AGREEMENT

THIS AGREEMENT is between Brookings County, South Dakota, referred to in this Agreement as the "County," and the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "State."

BACKGROUND:

1. The County wants to rehabilitate the one (1) track highway-rail grade crossing, DOT 197429L, project number PP 3234(51), Brookings County, PCN 0505, located on County right-of-way on 34th Avenue, east of the city of Brookings, South Dakota, with the installation of highway-rail grade crossing signals with gates and the installation of forty-five feet (45') of precast concrete crossing surface material, in compliance with federal aid requirements; and,
2. The State is responsible to assure the Federal Highway Administration that federal aid requirements are met in order to receive federal participation in adjustment costs.

THE STATE AND THE COUNTY MUTUALLY AGREE AS FOLLOWS:

1. The State will notify the Rapid City, Pierre & Eastern Railway Company (RCPE), the owner of the railroad, and will negotiate an agreement as necessary for the County for the rehabilitation of the signals and crossing surface.
2. The County will provide the County's 10% share of the total project cost of the above referenced highway-rail project through a combination of County funds and donated match services as shown in the estimate attached to this Agreement as Exhibit "A" for labor, equipment, and materials provided by the County for the approach work. The State will authorize the remaining 90% of the total project cost from funds available under Section 130 of Title 23, United States Code.
3. Upon completion of the County's portion of the work, the County will provide to the State proper documentation of donated match service costs incurred through the County's labor, equipment, and materials to be applied to offset the County's 10% match, as indicated in Section 2 above. The State will credit the County's donated match service costs so incurred and as found eligible by an audit performed by the State, towards the County's 10% share of the project. If the County's project costs incurred are more than the County's 10% share of the total project cost,

the State will provide a check to the County for the County's costs incurred in excess of the County's 10% share of the total project cost. If the County's donated match service costs incurred are less than the County's 10% share of the total project cost the State will bill the County for the difference.

4. In order to receive credit for the donated match services as described in Section 2 above, the County will provide the following information to the State upon completion of the donated services:
 - A. The County will provide a daily labor record, containing the name of the person providing the service, dates the person worked, number of hours worked, the project number, and a description of the type of work performed. A sample form of the daily labor records is attached to this Agreement as Exhibit "B."
 - B. The County will provide a weekly labor record containing the name of the person providing the service, the gross hours worked, the regular hours worked, the overtime hours worked, the pay rate for both regular hours and overtime hours, the dates the person worked, a description of the type of work performed, and the project number. A sample form of the weekly labor record is attached to this Agreement as Exhibit "C."
 - C. The County will provide a daily equipment record containing a description of the equipment used, the name of the person that operated the equipment, the hours worked, the regular hours, the overtime hours, the standby hours, rate of the cost to use the equipment, the total amount of the donated equipment use, the project number, the dates the equipment was used, and the type of work done by the equipment. A sample form of the daily equipment record is attached to this Agreement as Exhibit "D."
 - D. The County will provide a daily materials record containing a description of the material, the quantity of the materials, an invoice for the purchase of the materials or an affidavit if the material was from previous stock, the cost per each item used, the total amount of the donated materials, the project number, the date the materials were used, and the type of work for which the materials were used. A sample form of the daily materials record is attached to this Agreement as Exhibit "E."
 - E. The County is not required to use the forms provided as exhibits, but must provide the information contained in the forms.
 - F. The County will calculate hourly rates for services as follows:
 - a. The County should base the value of donated County staff time on the staff person's base hourly wage, not including benefits or other added pay.
 - b. The value of donated equipment will be the County's standard equipment rate or the standard hourly rental rate at a local equipment rental establishment.
 - c. The County will provide receipts or proof of cost for fuel and other items for actual cost credit.

5. The estimated cost of the various items of donated match service costs to be performed by the County under this Agreement is \$2,290.00. The estimated cost of work to be performed by RCPE for the rehabilitation of the signals and crossing surface is \$317,596.78. The estimated cost for construction engineering performed by the State is \$1,500.00. The total estimated project cost is \$321,386.78. The estimated 10% County match is \$32,138.68.
6. The County will complete the County's work in a timely manner. Within 90 days after the completion of project, County is required to submit all eligible incurred costs and required project records specified in this Agreement.
7. The County will send all billings and records for the County's project costs to the Watertown Area Engineer, Matt Brey, South Dakota Department of Transportation, PO Box 1446, Watertown, South Dakota 57201-1446.
8. All project charges will be subject to audit in accordance with the State's current procedures and U.S. Office of Management and Budget (OMB) 2 CFR Part 200 Subpart F. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 2 CFR Part 200.

The County will maintain accurate cost accounting systems for all costs incurred under this Agreement and clearly identified with activities performed under this Agreement.

Upon reasonable notice, the County will allow the State, through any authorized representative to have access to and the right to examine and copy all records, books, papers, or documents related to services rendered under this Agreement. County will keep these records clearly identified and readily accessible for a period of three (3) years after the date final payment under this Agreement is made and all other pending matters are closed.

If the County expends \$750,000 or more in federal funds during any County fiscal year covered, in whole or in part, under this Agreement, then the County will be subject to the single agency audit requirements of the US Office of Management and Budget (OMB) 2 CFR Part 200 Subpart F. If the County expends less than \$750,000 during any County Fiscal year, the State may perform a more limited program or performance audit related to the completion of Agreement objectives, the eligibility of services or costs and adherence to Agreement provisions.

9. The County may not use subcontractors to perform the services described in this Agreement without the State's express prior written consent. The County will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State

and Railroad Company. The County will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

10. The County will maintain the approaches and pavement markings at said highway-rail grade crossing.
11. The County will notify the Watertown Area Engineer, Matt Brey, South Dakota Department of Transportation, PO Box 1446, Watertown, South Dakota 57201-1446, telephone 605-882-5166, Matt.Brey@state.sd.us when commencing, discontinuing, resuming, and upon completion of the work.
12. The County will not begin any work not covered by Exhibit "A" which increases the amount of the estimate without first notifying the State and obtaining the State's prior written approval that the work is necessary and eligible. The County will not exceed the estimate unless one of the two following conditions is met:
 - a. The State may allow an increase in the cost estimate when a change in construction plans is authorized by an approved Change Order issued by the State before such work is begun.
 - b. The State may allow a minor increase in the estimated cost, eligible for reimbursement, after completion of the work, when such increase is adequately supported by detailed billing and sufficient explanation. A final Change Order, when approved, will place the increase in line for audit and payment.
13. The County will indemnify the State, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services under this Agreement. This section does not require the County to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents, or employees.
14. The County certifies, to the best of the County's knowledge and belief, that no Federal appropriated funds have been paid or will be paid, by or on the County's behalf to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or

cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the County will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The County must require the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all subrecipients must certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

15. The County has designated its County Commission Chairperson as the County's authorized representative and has empowered the Chairperson with the authority to sign this Agreement on behalf of the County. A copy of the County's Commission minutes or resolution authorizing the execution of this Agreement by the Chairperson as the County's authorized representative is attached to this Agreement as Exhibit F.

This Agreement is binding upon the signatories not as individuals but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the County to enter into same.

Brookings County, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Its: County Commission Chairperson

Its: Project Development Engineer

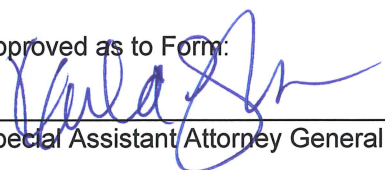
Date: _____

Date: _____

Attest:

Approved as to Form:

County Auditor/Clerk



Special Assistant Attorney General

(COUNTY SEAL)

Project 34th Ave RRJob No. Crossing Date _____

Brookings County in kind repair for 34th
Ave Railroad Crossing.

1. Patch (2) 10' x 30' x 4" asphalt surface
parallel to railroad crossing.

A. Remove existing surface

A1. Saw pavement 1 hour \$70.⁰⁰

A2. remove pavement with backhoe 1 hour \$120.⁰⁰

A3. Dumptruck to remove existing asphalt 1 hour \$80.⁰⁰

A4. spray crossing with tack oil 5 hour \$50.⁰⁰

B. Replace asphalt surface

B1. 4 men x 4 hours \$200.⁰⁰

B2. 1 dumptruck x 4 hours \$320.⁰⁰

B3. 1 steel/face roller x 4 hours \$200.⁰⁰

B4. 1 skid loader to spread asphalt x 4 hours \$320.⁰⁰

C. Materials 10 ton of Asphalt Cement = \$900.⁰⁰

total project cost \$2,290.⁰⁰

EXHIBIT 1 of 1

HIGHWAY-RAIL SAFETY PROGRAM
TAPERED MATCH (DONATION)
DAILY LABOR RECORD

Project No: _____ PCN: _____ Date: _____

Type of Work: _____

Name	Start	Stop	Start	Stop	Start	Stop	Total Hours

County of _____, South Dakota

By: _____

Its: County Commission Chairperson

Date: _____

Type of Work: _____

Date: _____

Exhibit D

Project No. _____
PCN: _____
Date: _____

Type of Work: _____

Equipment	Operator	Start	Stop	Start	Stop	Hours	Regular Hours	Overtime Hours	Standby Hours	Rate	Amount

County of _____, South Dakota

By: _____

Its: County Commission Chairperson

Date: _____

Type of Work: _____

Date: _____